

# MESSY ISSUES IN HIGH ASSET DIVORCE



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Going through a Divorce is never easy, and when a couple with high assets ends their marriage, things can get messy. - Read more to know what to issues or complications to be aware of, and how to choose the right Divorce Attorney for you.

# MESSY ISSUES IN HIGH ASSET DIVORCE

**Because failing to plan, is planning to fail. Know your rights, and get the Divorce Settlement that you Deserve with the Results you Desire.**

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# MESSY ISSUES IN HIGH ASSET DIVORCE

A divorce is a life-changing event, and just like you plan for other life-changing events such as a marriage, the arrival of a child, or purchasing real estate, planning for divorce will ease the process and remove a lot of stress. Many facets of your life will change, but knowing what to expect, and choosing the right divorce attorney to look out for your interests, allows to move forward with confidence.

Whether you are the spouse that is seeking a divorce, your spouse has filed or is planning to file, or a joint decision has been made to end the marriage, there are a number of things that you can do to facilitate an amicable separation.

From family businesses where each spouse is involved to spouses engaging in deceptive practices, such as hiding assets, high asset divorces present unique challenges. The areas that can spark potential conflict include:

- Businesses - Valuation & Division
- Unique Assets
- Hidden Assets
- Mixed Property
- Forensic Accounting & Valuation Experts
- Premarital Agreements
- Spousal Maintenance & Alimony



# Businesses – Valuation & Division

Many people run their own businesses and don't think about what could happen to that business in the event of a divorce.

For family owned businesses run by married couples, a poorly handled divorce can be devastating to not only the couple, but the business as well. Determining if the business is "marital" or "non-marital" can be one of the biggest issues when a high asset couple divorce. If the business was started during the marriage using marital funds, unless there is a post-marital agreement specifying the business is "non-marital" it is very likely the business will be subject to division as marital property.

There are many different types of businesses that a person can own, and the type of business can impact property division. For example, closely held businesses where the owner essentially is the business are seen by Illinois courts as having "goodwill".

Goodwill, under Illinois law, refers to the ability of a person to run a company based upon the personal reputation they've built up with the business. This does not mean that the spouse in a marriage (where a marital business is operating with a lot of goodwill) will not receive anything. The assets of the business still have value.

## Businesses - Valuation & Division *(continued)*

For example, at a doctor's office, the medical equipment, phones, computers, etc. all have a value that is subject to division in a divorce. But, keep in mind, business valuations are very specific to each individual business. If you're facing divorce and business interests are involved in the property division, it is critical to get legal advice from a highly experienced divorce attorney.

Providing an accurate value on your family business is complex, and critical to receiving an equitable division during a divorce property settlement. You need an industry professional to help you determine the value of all company shares and evaluate all tax implications of dividing a business.



# Retirement, Stock & Investment Accounts

## *PENSIONS, RETIREMENT & QUALIFIED DOMESTIC RELATIONS ORDERS*

Pension benefits earned during the marriage are generally considered a joint asset, therefore the length of the marriage can affect spousal rights to pension benefits. Speak with an experienced high net worth divorce lawyer to ensure your pension is calculated correctly and for direction

with any issuance of the proper Qualified Relations Order (QRDO) which recognizes the joint ownership of retirement accounts and direct benefits to the former spouse.

## *STOCKS, IRAS, 401(K) AND PROFIT SHARING PLANS*

When dividing stock investments, be sure to consider the total number of shares rather than the dollar values as this may change with the market.





# Unique Assets

Couples with significant assets and high income often acquire unique assets such as artwork, collectables, antiques, and business property, and other items. Like most property in a high asset divorce, the services of a forensic accountant or specialized appraiser is necessary to properly evaluate the fair market value of such property.

Some of these unique items we see in high asset divorce include, but are not limited to the following:

## COLLECTIONS AND OTHER MEMORABILIA

Items such as photographs and home videos are invaluable and can be highly fought over in property division, whether a high asset divorce or not. Today, technology makes it possible to produce copies of many of these items alleviating disputes. However, when it comes to originals, things can get messy. Collections of all kinds can also be fought over, especially since many collectible items may be worth a lot of money and quite often only one spouse is fully aware of the real market value.

## ARTWORK AND VALUABLE ITEMS

Division of valuable artwork has become a major issue in many high-property divorces, especially when the artwork has substantially increased in value. Artwork acquired during a marriage is treated just like any other marital property. Many divorce litigants choose to hire appraisers to determine the value of art collections so that the artwork can be equitably divided in a divorce settlement agreement. Another option is to sell the property and divide the proceeds.



The clarification of marital property is the key in dividing any valuable items during a divorce. Items acquired during the marriage are most often considered marital property.

### INTELLECTUAL PROPERTY

Pension benefits earned during the marriage are generally considered a joint asset, therefore the length of the marriage can affect spousal rights to pension benefits. Speak with an experienced high net worth divorce lawyer to ensure your pension is calculated correctly and for direction with any issuance of the proper Qualified Relations Order (QRDO) which recognizes the joint ownership of retirement accounts and direct benefits to the former spouse.

### INTANGIBLE ASSETS

Some assets are intangible or abstract but have significant value to a couple. Here are just a few that are common in a high asset divorce:

#### Reward Points & Frequent Flyer Miles

These can be easily overlooked, but they should not be. Rewards points and frequent flyer miles are not physical assets but can be used to purchase real items, such as plane tickets. Splitting up your rewards is only fair.

#### Memberships

Another type of abstract asset is memberships to places such as country clubs or golf clubs. These places often require substantial annual dues and expensive initiation fees, which make them valuable assets in a marital dissolution.



## **PETS**

Pets are often an important part of a family. In Illinois, the law provides detailed guidelines for the possession and allocation of responsibility of companion animals owned jointly by a divorcing couple.

The law most commonly refer to the family dog but also pertains to all companion animals including cats and horses. This can get especially complicated for animals with a high monetary value such as show dogs and cats or racehorses.

Companion animals are still referred to as assets, although the court now takes into consideration what is in the best welfare of the animal. This assessment is different from the way all other assets are treated during property division.

## **GIFTS GIVEN TO EACH OTHER**

Gifts given to one another during the marriage are considered marital assets and subject to division in divorce. In a high asset divorce, there may be lavish and/or unusual gifts that are quite valuable and should not be overlooked whe dividing assets. As for gifts given to your spouse before you were married, like a diamond engagement ring, are excluded from the marital property division.







# Hidden Assets

Assets are easily manipulated, especially in a high asset divorce. Spouses that are business owners are often suspect of hiding assets since assets and/or income can be easily hidden in a business. Businesses that were once lucrative, suddenly start losing revenue during the divorce. There are many cases where the court will intervene and appoint a receiver to manage the business involved in a divorce, just to make sure the accounting and money management were being done correctly.

Here are a few potential scenarios of hidden assets that should be analyzed carefully:

## *BUSINESS EXPENSES*

People write off a lot of their personal expenses and call them business expenses, which lowers the revenue stream. Business owners will have payroll records for people that do not exist or might be paying their "girlfriend" or "boyfriend" an exorbitant amount of money for menial tasks. Businesses are a gold mine for questionable practices.

## *SHIELDING INCOME*

For senior-level executives at a company, there are many ways to shield income. It is possible to carry over income into the next year or put the money back into the business for distribution later. They can delay a bonus or a raise.

## *HIDING ASSETS WITH FAMILY AND FRIENDS*

Oftentimes friends and family help out with hiding assets or "buying" an asset for a much lower price than the asset was worth. After the divorce, the asset is bought back and money is essentially hidden from the unsuspecting spouse.

In such situations, an expert is likely needed to explain the scheme to the court so that the hidden asset can be put back into the marital estate for appropriate division. People typically know that their spouse is skimming money from the family business or using creative accounting, but you'll likely need an expert to prove your case.



# Forensic Accounting & Valuation Experts

Couples with significant assets and high income often acquire unique assets such as artwork, collectables, antiques, and business property, and other items. Like most property in a high asset divorce, the services of a forensic accountant or specialized appraiser is necessary to properly evaluate the fair market value of such property.

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# Mixed Property

There is divorce property that is considered “mixed property” which means the property has characteristics of both marital and non-marital property. Retirement accounts are a good example of potential property with marital and non-marital elements. If a party contributed to their retirement prior to the marriage, then that money is deemed non-marital. However, the contributions made to the retirement account from the date of marriage to the date of dissolution are considered marital property.

## *PROPERTY OWNED PRIOR TO MARRIAGE BUT SOLD DURING MARRIAGE*

When property owned prior to marriage is later sold sometime during the couple’s marriage, that’s where things can get a little gray. You have to be very careful here.

If you sell non-marital property and then deposit the proceeds into a separate account or if you then buy something in exchange for the non-marital property, you will generally have a better argument that the proceeds or later purchased property is still non-marital.

However, if you sell your non-marital property and place the proceeds in your joint account and use those funds to pay the mortgage payment for the marital home and expenses for the next five years, those once non-marital proceeds are now commingled with marital funds. When commingling occurs, it is likely that the funds will be considered marital. The same result occurs in a scenario where you sell your non-marital boat in order to purchase a bigger boat and put the title of the new boat in both your name and your spouse’s name. When you do that, you are losing that non-marital identity.

A close-up photograph of a bride and groom holding hands. The groom is on the left, wearing a dark suit jacket, and the bride is on the right, wearing a white wedding dress. They are both looking down at their hands.

# Prenuptial Agreements

Another messy issue we often see in high asset divorces involves the existence or validity of premarital agreements. Prenuptial or premarital agreements have traditionally been used to protect property owned prior to the marriage or property that is expected to be inherited during the marriage. Commonly referred to as a “prenup,” premarital agreements are also used to determine how valuable assets will be split in the event of divorce, especially unique assets.

There are circumstances where the validity of a prenuptial agreement may be called into question, especially in a high asset divorce. A divorce court may deem a premarital agreement invalid under the following circumstances:

- **Duress or coercion:** “*Duress*” means the inability of either person to exercise free will, which can occur, for example, if one person did not have an attorney, did not read the agreement, or was not properly explained the contents of the agreement, among other things.
- **Unconscionable:** “*Unconscionable*” means the absence of a meaningful choice of a person where the agreement favors the other person, meaning the agreement is totally one-sided, oppressive, overreaching, or involved concealment or manipulation by one spouse. In order to determine if the agreement is unconscionable, a court can consider the conditions under which the agreement was made and the economic circumstances of each party resulting from the agreement.

A challenge to a premarital agreement based on unconscionability is typically only successful where it can be shown that the actual procedural process was unfair. Generally, courts will review the fairness of the agreement when it was entered into, not as it applies upon divorce. For example, disproportionate bargaining power between spouses might support a finding of procedural unconscionability. However, a later change in circumstances does not affect the enforceability of the agreement.





# Spousal Support & Maintenance

In any Illinois divorce action including a high asset divorce, maintenance (sometimes referred to as alimony or spousal support) is determined by Illinois law and at the discretion of the judge. Once the court determines that maintenance is appropriate, the spouse who has the higher income is responsible for paying maintenance to the spouse with the lower income. Courts now use a formula to calculate maintenance, which we call “guidelines.” Guideline maintenance is only used for spouse who have a combined gross income of less than \$500,000. In a high net worth or high asset divorce, guidelines won’t necessarily apply if there is more than \$500,000 made in the household. The court will look at how much your spouse needs, as well as other factors, and an award will be based on the needs or the parties’ circumstances, instead of the guideline formula.

As of 2019, the Illinois statute provides that if an award for maintenance is not appropriate, the court must bar the request, regardless of the length of the marriage. Length of marriage is a big factor in any divorce but the new change in the law reiterates that a marriage’s length is only one of many relevant factors that must be considered when deciding if an award is appropriate in the first place.



If the court determines that an award for maintenance is appropriate after considering all relevant factors, then you move forward to figure out duration and amount. To do so you must determine if guideline maintenance duration and amounts are appropriate.

In Illinois, the statutory factors under section 504(a) of the Marriage and Dissolution Act determine which spouse will be responsible for paying maintenance. There are factors that helps the judge determine which spouse is responsible for Maintenance.

These factors are particularly important in high asset/high income divorce and include:

- Income and property of each spouse, as well as all the financial obligations imposed on the spouses due to the divorce;
- The needs of each spouse;
- The present and future earning capacity of each spouse
- Any impairment of the present and future earning capacity of the spouse who put off having an education or career because of the marriage;
- How long it will take the spouse to obtain education, training and employment;
- The standard of living the spouse has become accustomed to during the marriage;How long the spouses were married;
- Each spouse's age, health, and occupation;
- The tax consequences of such maintenance;
- Whether the spouse seeking maintenance contributed to the education, training, or career of the other spouse;
- and the existence of any valid agreement(s) between the spouses.



## AVOID MISTAKES IN YOUR HIGH ASSET DIVORCE

Divorce is painful. And it can be tempting to inflict pain on the other party in return. But keep in mind, inflicting pain for pain's sake can be expensive. In many cases, a smart lawyer who's looking out for your best interests will advise seeking an amicable and, ultimately, a less expensive solution.

With high asset divorce, the stakes are high. Avoid making mistakes, either in an effort to minimize your spouse's gain or to preserve your entire estate. An experienced divorce attorney will steer you clear of these mistakes.

An experienced high asset divorce attorney will know how to avoid mistakes and work with an experienced team of professionals. A high asset divorce attorney acts as the quarterback of a powerful team of

professionals which includes forensic accountants, other legal experts, as well as public relations managers and private investigators. With the right legal team by your side, your high asset divorce will result in a fair and equitable property distribution and assets division settlement.

### *HIRING THE RIGHT HIGH ASSET DIVORCE ATTORNEY*

Anderson & Boback partner with you from the beginning to help you through the entire divorce process including property division of a high asset and complex divorce. We practice family law in Illinois, working with our clients with an open line of communication to strategize and develop the best plan for the divorce settlement that you deserve.



## WHY ANDERSON & BOBACK

At Anderson and Boback, we are highly respected attorneys experienced in Illinois family law. We are skilled at negotiation and litigation. You are not just a case, you're a person. We understand the fears and questions that you have, we specialize in bringing understanding and certainty to what can be a chaotic and uncertain time.

We provide legal services in:

- Divorce
- High Asset Divorce
- Adoptions
- Child Support
- Custody/Allocation Judgments
- Prenuptial Agreements

You can have confidence in our years of experience and expertise with family law. Kimberly Anderson, Janice Boback, and Jessica Marshall are attorneys with in-depth knowledge of the many facets of Family Law in Illinois.





## Why Anderson & Boback *(continued)*

Ms. Anderson, as a prior prosecutor, is widely regarded as a highly esteemed and experienced litigation attorney. She has successfully tried complex financial contested cases in Cook and Lake County. Ms. Boback has extensive knowledge in finance and division of marital assets, and lectures extensively on her knowledge of military law. Ms. Boback is appointed by the court on a regular basis for military personnel and has served as an expert witness in that capacity. Ms. Marshall's trial and courtroom experience is extensive, and she concentrates complex and extensive asset tracing.

**The law firm of Anderson and Boback knows how emotionally draining and stressful it is to go through a divorce, child custody dispute, adoption process and many more family-related legal matters. Our law firm keeps an open line of communication with our clients at all times. When you need an advocate to represent your rights and best interests, fighting for what you are entitled to, contact Anderson and Boback, the only call you need to make when you need the right divorce attorney in Illinois.**

To book a confidential consultation, please call (312) 715-0870 or visit our website at [illinoislawforyour.com](http://illinoislawforyour.com) to request an appointment.

**NOTICE:** Each individual person's case has unique facts and circumstances. Therefore, the information provided in Anderson & Boback's *How to Plan for Your Divorce* is general information and is not a substitute for legal advice from an attorney. The information contained in this Guide does not constitute legal advice nor is it intended to be legal advice. If you have a need for legal advice, please consult with an attorney.